

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

CHANSLER DEPAUL MALLARD, §
§
Petitioner, §
§
v. § 2:15-CV-0019
§
LORIE DAVIS, Director, §
Texas Department of Criminal Justice, §
Correctional Institutions Division, §
§
Respondent. §

ORDER OVERRULING OBJECTIONS,
ADOPTING FINDINGS, CONCLUSIONS AND RECOMMENDATION
and DENYING PETITION FOR A WRIT OF HABEAS CORPUS

Petitioner has filed with this Court a petition for a federal writ of habeas corpus. On January 4, 2018, the United States Magistrate Judge issued findings, conclusions and a recommendation in this cause, recommending therein that the instant habeas application be denied. On January 18, 2018, petitioner timely filed objections to the Magistrate Judge's Report and Recommendation.

By his objections, petitioner again raises the trial court's failure to conduct a competency hearing. Petitioner references the Order for Examination Regarding Insanity which states,

It is further ORDERED that this matter shall be set for a hearing before this Court at which time the Court shall consider the reports of any experts herein. On the date of such hearing, the Court shall determine if there is competent evidence to support the submission of the insanity defense under Article 46C of the Texas Code of Criminal Procedure to the jury at the trial of this cause.

[Petitioner's Objections, ECF 43 at 2; ECF 16-12 at 59]. As set forth in the Findings, Conclusions and Recommendation, petitioner continues to confuse not only the concept of a competency hearing

with the hearing referenced by the trial court's order, which related to the issue of insanity, but also whether, based upon the expert report, an insanity defense was available to petitioner at trial. While the trial court failed to hold a hearing on the insanity defense issue, even though it had previously ordered one, it appears, based upon a review of Dr. Schneider's expert report and trial counsel's affidavit, as set forth in the Findings, Conclusions and Recommendation, that the trial court determined such a hearing was not necessary.

Therefore, having made an independent examination of the record in this case and having considered the objections made by petitioner to the Findings, Conclusions and Recommendation, the undersigned United States Senior District Judge finds the objections filed by petitioner are without merit and are hereby OVERRULED. The Magistrate Judge's Findings, Conclusions and Recommendation is ADOPTED. Accordingly, the petition for a writ of habeas corpus is DENIED.

IT IS SO ORDERED.

ENTERED this 22nd day of January 2018.


MARY LOU ROBINSON
UNITED STATES SENIOR DISTRICT JUDGE